FROM THE FIELD

Summary Report on a Theological-Ethical Discussion of the CDF "Principles for Collaboration with Non-Catholic Entities in the Provision of Health Care Services"

On August 29, 2014, CHA gathered a small group of theologians and ethicists to discuss the CDF "Principles for Collaboration with Non-Catholic Entities in the Provision of Health Care Services," released on February 17, 2014. Participating in the discussion were Peter Cataldo, Fr. Gerald Coleman, Johnny Cox, John Gallagher, Fr. Tom Kopfensteiner, James LeGrys, Therese Lysaught, Fr. Michael Place and CHA staff Sr. Patricia Talone, Lisa Gilden, Ron Hamel and Fr. Thomas Nairn. Sr. Mary Haddad was an observer in her role as Senior Director for Sponsor Services and Ellen Schlanker was an observer in her role as Director of Communications.

The goals for the meeting were four: 1) achieve greater understanding of the Principles; 2) identify and attempt to clarify areas of ambiguity; 3) identify possible implications of individual principles for Catholic health care; and, 4) achieve some consensus on the authority of the document. The basis for the discussion was a commentary on the Principles by Peter Cataldo, with regard to which there was considerable consensus. Dr. Cataldo's commentary informs many of the comments below.

1. **General Observations.**

- There are ecclesiological issues behind the Principles that very much need to be surfaced and addressed, especially the relation of the Church to the world. A "Christ and Culture" typology might be a fruitful way to clarify and better understand various conceptions of the relationship of the Church to the world. Partnerships are not just health care issues; they also involve the nature of the Church. For example, they can be vehicles of the Church's engagement with the world.

- The Principles are an application of the Principle of Cooperation to a particular set of circumstances—collaborations with other-than-Catholic health care organizations.

- There is nothing particularly new in the Principles. They generally reflect and affirm what has been and is being done across Catholic health care with regard to

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collaborations with non-Catholic entities.

- The Prologue to the Principles recognizes the need in the current health care environment for Catholic health care organizations to collaborate with non-Catholic health care institutions, "even establishing joint working arrangements in which the Catholic and non-Catholic entities are full partners." Such collaborations are not inherently wrong.

- The Prologue also recognizes that collaborations with non-Catholic entities may be pursued primarily to meet the health care needs of the community. The survival of the Catholic entity need not be at stake.

- The Principles are "intended to ensure that Catholic healthcare institutions neither cooperate immorally with the unacceptable procedures conducted in other healthcare entities with which they may be connected nor cause scandal as a result of their collaboration with such other entities."

- The Prologue also explicitly recognizes the complexity and variety of arrangements and the need to apply the Principles, the Principle of Cooperation, and the *Ethical and Religious Directives* on a case-by-case basis.

- The Principles in themselves are not likely to have any adverse implications for Catholic health care.

- The Principles do not have the weight/authority that other documents issued from the CDF might have. The Principles do not constitute a *Responsum* to the *Dubium* that was sent to the CDF by the then president of the USCCB on April 15, 2013. They are not written on CDF stationary, are not signed or dated by the Prefect of the Congregation, nor is there any indication that they were seen and approved by the Pope—all usual with a typical *Responsum*. Rather, the Principles are an advisory document to the bishops intended, as the letter from Cardinal Mueller states, "to assist the Bishops of the United States in considering their teaching and governing responsibilities in the development and reorganization of Catholic health care organizations or systems." At least one church authority has commented that the Principles do not rise to the same status as the *Ethical and Religious Directives* themselves.

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2. **The Principles Themselves.**

What follows reflects the understanding of the Principles by those participating in the meeting. Of course, this understanding is subject to further elucidation by the bishops and or by the CDF.

The ordering of the Principles below reflects the order of the group's discussion and also reflects a certain logic in the clustering of related principles.

- #7 speaks to a preference for collaborations with other Catholic entities or with those non-Catholic entities that function in a manner consistent with Church teaching.

- #2 underscores the illicit nature of *formal cooperation* and the liciety of *material cooperation* under certain circumstances.

- #5 has been interpreted narrowly by some as specifying the only legitimate reason for cooperation, that is, the survival of the Catholic entity. This interpretation, however, does not make sense in light of the tradition. Rather, what the principle seems to be saying is that if the financial viability and survival of the Catholic organization is at issue, then the reason for cooperation with a non-Catholic organization should be survivability and not "financial advantage or financial stability for its own sake apart from the real risk of financial collapse" (Cataldo). Survival need not be limited to immediate survival. It could include future survival if certain actions are not taken today.

- #6 begins by stating that a Catholic health care organization cannot engage in the wrongdoing of another organization either by intending the moral object of the act or by providing essential circumstances for the wrongdoing to occur in and through the collaboration, even if not intending the wrongdoing (Cataldo).

  This principle also states that an arrangement where the Catholic entity is a subsidiary of a non-Catholic parent is not ruled out a priori nor is Catholic participation on the board, so long as the parent functions in a manner consistent with Catholic ethical principles (Cataldo).

- #10 describes theological scandal.

- #11 indicates representatives of a Catholic institution on a board of a mixed system should **recuse** themselves from any decisions "proximately connected with immoral procedures." Of course, they may also vote against such

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decisions, but this is not morally required.

This principle also "recognizes the moral legitimacy of a Catholic health institution involved in the direction of a health care system with subsidiaries that do not adhere to the ethical principles of the Catholic Church. Being part of the governance of such a system in itself does not constitute illicit cooperation in any immoral activity performed by the non-Catholic subsidiaries" (Cataldo).

- #17 states that diocesan bishops must be informed of prospective agreements and cessation of agreements. In addition, local ordinaries ought to be in communication with one another over these matters as appropriate.

- Several principles identify the **presence** of ***formal cooperation***. Formal cooperation is likely present if:

    - #1, an administrator or board, in an arrangement that includes both Catholic and non-Catholic components, **makes decisions that correspond to actions that are themselves immoral and enter into the formality of the immoral actions**, even if those decisions apply only to the non-Catholic facilities within the organization.

      This principle also recognizes the moral agency of institutions (by analogy) and the individuals in leadership and governance who act on behalf of the institutions. Hence, it is appropriate to assess the cooperation in evil on the part of both administrators and the institution itself.

    - #3, the directors of a Catholic health care system give **approval** to the wrongdoing of the non-Catholic party even if their remote/ultimate intention is different from the wrongdoing, and most likely is itself a good intention. This seems to be describing implicit formal cooperation.

    - #4, the administrator or board of an organization comprised of both Catholic and non-Catholic facilities officially **consent** to immoral procedures within the system or facility under his/her/their authority.

      This does not preclude the possibility of licit material

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cooperation on the part of non-administrative employees (or board members or administrators for that matter).

- #8, a Catholic health care system takes into itself an institution that has not agreed to abide by the ethical principles articulated by the Church. If the formerly non-Catholic institution engages in wrongdoing under the auspices of the Catholic institution of which it is now a part, then the Catholic organization engages in formal cooperation.

- #9, the administrators or employees of a Catholic entity are directly involved in wrongdoing at a secular entity of the same system, though this could also be immediate material cooperation. When becoming part of such an organization, the Catholic entity must ensure prior to finalizing the arrangement that it will not be involved directly in immoral procedures, that its facilities and other resources not be used for such procedures, and that none of its members will be required to make referrals (to be distinguished from providing information that is in the public domain). Attention must be given to the possibility of scandal.

- #12, board members **set up or help set up an administrative body**, such as a board of directors, independent or supposedly independent of the system or institution, that will **oversee the provision** of immoral services. This is to be distinguished from the Catholic party's making clear to its potential non-Catholic partner that it cannot be involved in the governance, management, financing or profit, or provision of any other essential circumstances regarding immoral procedures. These must be isolated from the Catholic entity. As Cataldo explains: "Informing a prospective partner what it cannot do if the collaboration is to take place is an act of separation and removal by the Catholic institution from the immoral procedures, not formal cooperation in them.

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Informing the prospective non-Catholic partner what it cannot do if it is to avoid illicit cooperation is in itself a good act."

- #13, board members **set up or help set up an entity**, such as a clinic, independent or supposedly independent of the system or institution, that will be **engaged in immoral procedures**.

- Several principles describe **what ought to be done if Catholic health care institutions or board members are faced with or are involved in formal cooperation.** If such is the case, the institution or board members must
  - #14: **extricate** itself/themselves as soon as possible from the situation.
  - #15: **Extrication is compatible with remaining in the system/arrangement** so long as the Catholic party is not formally cooperating. The formal cooperation has ceased.
  - #16: When extricating itself from formal cooperation by reconstituting the system as non-Catholic, the Catholic organization must do what it can to ensure that the secular entity **adheres as closely as possible to principles of the natural moral law.** This suggests the moral legitimacy of a statement of common values.

    This principle also recognizes that a corporation can have moral responsibility and engage in moral acts through individual board members.

3. **Other Observations on the Principles Themselves.**

- It would have been helpful had there been a theological and ecclesiological context within which to interpret the Principles.

- It would have been helpful had a distinction been made between ownership and control. The mere fact of ownership is not decisive. Control is much more so.

- What does "governing" mean? There is civil governance and ecclesiological governance. There is need for greater clarity in this regard. What is the bishop's role in governance? This is not clear.

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- There is some confusion in the language of "board members" and "administrators," "directors" and the responsibilities of boards. Also, are the boards that are referred to system boards or facility boards? There is some lack of clarity regarding levels of governance in the document.

- There is a critical difference between collaborating with organizations that may be engaged in some wrongdoing and cooperating in the wrongdoing.

- The CDF's Principles demonstrate that "purist" views of the Principle of Cooperation are a distortion of the tradition.

- Is there a sufficient distinction between "toleration" and "approval"? The document might have benefitted from some discussion of toleration.

4. **Discussion of Other Issues Related to the Principles.**

   - New structures are needed to help Catholic health care work more collaboratively and constructively with the bishops and to enhance trust between both. Catholic health care needs to work on credibility and transparency with local bishops.

   - The Principle of Cooperation may not be sufficient by itself to deal with the ethical issues arising in the new health care environment in which Catholic health care finds itself. We may also need to draw upon other theological resources from within the tradition.

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